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Sec. 3-51400. Legislative findings.

The city council finds and declares all of the following:

- (a) Potentially dangerous dogs and dangerous dogs are a serious and widespread threat to the public safety and welfare. They have assaulted without provocation and seriously injured numerous individuals, particularly children, and have killed or injured domestic animals. Many of these attacks have occurred in public places or in private places where the victims were conducting themselves peaceably and lawfully.
- (b) The number and severity of these attacks are often attributable to the failure of owners to confine and properly control potentially dangerous dogs and dangerous dogs.
- (c) The control of potentially dangerous dogs and dangerous dogs is a matter requiring regulation, and existing laws are inadequate to deal with the threat to public health and safety posed by potentially dangerous dogs and dangerous dogs.
- (d) The owning, keeping or harboring of potentially dangerous dogs and dangerous dogs is a nuisance subject to abatement and control under this article or pursuant to any other applicable provision of law.
- (e) Members of the public must be protected from fear-inducing threats of attack as well as from actual attack by potentially dangerous and dangerous dogs. (Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97.)

Sec. 3-51401. This article controlling.

The provisions of this article shall control over any contrary provisions of this chapter. When other provisions of this chapter impose requirements beyond those imposed by this article, such additional requirements shall remain applicable except where a contrary intention is clearly evident.

(Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97.)

Sec. 3-51402. Potentially dangerous dog and dangerous dog classification.

- (a) Potentially dangerous dog means any of the following:
- (1) A dog that while at large menaces, chases, displays threatening or aggressive behavior or otherwise threatens or endangers the safety of any person or domestic animal.
- (2) Any dog that due to a combination of size, strength and aggressiveness, as demonstrated by aggressive or threatening behavior directed against a person or animal at a place and time where the person or animal was conducting themselves peaceably and lawfully, would constitute a substantial danger to the life or safety of people or animals if not subject to the potentially dangerous dog provisions of this article.
- (3) A dog that aggressively bites or causes physical injury to any person or domestic animal.
- (b) Dangerous dog means any of the following:
- (1) A dog that causes the serious injury or death of any person.
- (2) A dog that while at large causes the serious injury or death of any domestic animal.
- (3) A dog that engages in or has been trained to engage in exhibitions of fighting.
- (4) A dog that engages in behavior described in subsection (a) after it has been classified as a potentially dangerous dog and its owner or keeper has received notice of the potentially dangerous dog classification.
- (c) As used in this section, "physical injury" means any injury requiring basic first aid and "serious injury" means any injury requiring treatment other than basic first aid. (Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 7, 4-6-04.)

Sec. 3-51403. Potentially dangerous dog and dangerous dog classification procedure.

- (a) Animal services officers are authorized to determine whether any dog has engaged in the behaviors or exhibits any of the characteristics specified in section 3-51402.
- (b) When an animal services officer has reason to believe that a dog is potentially dangerous or dangerous, the officer shall conduct an investigation to determine whether there is sufficient evidence to support classifying the dog potentially dangerous or dangerous. The evidence shall include observations and testimony by animal control officers or other witnesses who personally observed the animal's behavior. The evidence may include testimony about the dog's upbringing and the owner's or keeper's control of the dog.
- (c) If the animal services officer determines sufficient evidence exists to classify a dog as potentially dangerous or dangerous, he or she must consider the existence of any mitigating circumstances described in section 3-51418 or in an administrative regulation promulgated by the city manager before reaching a determination; however, the existence of mitigating circumstances shall not require the officer to refrain from classifying a dog potentially dangerous or dangerous.

- (d) When a potentially dangerous or dangerous dog classification determination is based solely on the uncorroborated testimony of the victim or a witness other than a law enforcement officer, the testimony must be contained in a written statement signed under penalty of perjury.
- (e) Once the animal services officer determines that a dog should be classified under 3-51402, he or she must serve the owner or keeper of the dog with a notice of classification.
- (f) The city manager may establish administrative regulations for the classification of potentially dangerous and dangerous dogs.

(Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 8, 4-6-04.)

Sec. 3-51404. Reserved.

Editor's note: Ord. No. 6-2004, § 9, adopted April 6, 2004, repealed § 3-51404 in its entirety. Formerly, said section pertained to severe injury defined as enacted by Ord. No. 1872, § 1, adopted May 23, 1989; as amended.

Sec. 3-51405. Request for hearing.

- (a) If the owner or keeper disputes a classification determination under 3-51403, an impoundment under 3-51416(b), the destruction of a dog under 3-51416(d), or a restriction on possession or control of a dog under 3-51438, he or she must deliver a written request for a hearing within five days of service of notice or else waive any further right to contest the action. The request must be delivered to the City of Fremont at the animal services supervisor at the animal shelter located at 1950 Stevenson Boulevard. The request must state in detail the factual basis to contest the action and describe in detail any claimed affirmative defense or mitigating circumstance.
- (b) If a timely request for hearing is submitted in accordance with subsection (a), the animal services superintendent shall schedule a hearing under 3-51410 within 10 days of receiving the request, or as soon as practical thereafter. Notice of the hearing may be served on both the owner or keeper by regular mail as provided in 3-51406(b). (Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 10, 4-6-04.)

Sec. 3-51406. Service of notice.

- (a) When another provision of this article requires that notice be given by the city under this subsection, the notice may be served in any of the following means.
- (1) Personal service.
- (2) Certified mail at the last known address, postage prepaid, return receipt requested. Simultaneously, the same notice may be sent by regular mail to the last known address. If a notice that is sent by certified mail is returned unsigned, then service shall be deemed effective by regular mail, provided the notice that was sent by regular mail is not returned.
- (3) Posting the notice conspicuously on or in front of the property where the dog was last known to be kept.
- (4) If the dog's keeper and the dog's owner are known to the animal services officer issuing the notice to be separate individuals residing at different addresses, notice to the owner may be served by regular mail at the owner's last known address provided that

notice is also given to the keeper by one of the methods described in subsection (a)(1) through (a)(3).

- (b) When notice is not required by another section to be given as provided in subsection
- (a), then notice may be given by regular mail at the addressee's last known address.
- (c) Service by certified or regular mail in the manner described in this section shall be effective on the date of mailing.
- (d) Proof of notice may be made as provided in section 1-2108.
- (e) The failure of the owner or keeper to receive any notice served in accordance with this section shall not affect the validity of any proceedings taken under this Code. (Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 11, 4-6-04.)

Sec. 3-51407. Reserved.

Editor's note: Ord. No. 6-2004, § 12, adopted April 6, 2004, repealed § 3-51407 in its entirety. Formerly, said section pertained to impounded defined as enacted by Ord. No. 1872, § 1, adopted May 23, 1989; as amended.

Sec. 3-51408. Reserved.

Editor's note: Ord. No. 6-2004, § 12, adopted April 6, 2004, repealed § 3-51408 in its entirety. Formerly, said section pertained to provoked defined as enacted by Ord. No. 1872, § 1, adopted May 23, 1989; as amended.

Sec. 3-51409. Exemption for police dogs.

This article does not apply to any dog owned by any government agency or by any publicly employed law enforcement officer which is used in the performance of police work.

(Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97.)

Sec. 3-51410. Administrative hearing.

- (a) All administrative appeals from actions taken under this article shall be heard as provided by this section. The hearing procedures specified in Food and Agricultural Code section 31621 are expressly not adopted.
- (b) A hearing under this section shall be informal and open to the public. The hearing shall be conducted before a hearing officer designated by the city manager in accordance with this section. The hearing officer shall record the proceedings on audiotape. The hearing officer shall regulate the course of the proceeding and shall permit the parties and may permit others to offer written or oral comments on the issues. The hearing officer may limit the use of subpoenas, witnesses, testimony, evidence, rebuttal, and argument. The hearing official may allow the cross-examination of witnesses to the extent necessary to ensure a fair hearing and may limit cross-examination of witnesses as necessary to maintain proper decorum. The city manager may establish rules or regulations governing the selection and duties of hearing officers.
- (c) Unless provided otherwise, the city bears the burden of proof at the hearing. The owner or keeper has the burden of proof to demonstrate the existence of any affirmative defense or any mitigating circumstance that may apply.

- (d) The owner or keeper and animal services officer presenting the case may be represented by counsel, and may present oral and written evidence. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Relevant admissible evidence includes but is not limited to incident reports and witness affidavits. A formal oath is not required for witnesses to provide testimony.
- (e) Within ten days of the hearing, the hearing officer shall issue a written determination supported by the weight of the evidence. The failure of the hearing officer to issue a timely decision shall not prejudice the city's right to act in the matter.
- (f) The hearing officer's determination shall be served on both the owner and the keeper as provided in section 3-51406(b).

(Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 13, 4-6-04; Ord. No. 34-2004, § 2, 11-2-04.)

Sec. 3-51411. Form of notice.

The city manager may promulgate administrative regulations adopting specific forms that must be used when giving notice or requesting a hearing under this article. (Ord. No. 1872, § 1, 5-23-89; Ord. No. 2165, § 2, 4-16-96; Ord. No. 2168, § 2, 5-7-96; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 14, 4-6-04.)

Sec. 3-51412. Subpoenas.

In any hearing conducted pursuant to this article, the hearing officer shall have power to examine witnesses under oath and compel their attendance and/or the production of evidence before him or her by subpoenas issued by him or her in the name of the city and attested by the city clerk. Any person who shall be served with such a subpoena to appear and testify or to produce books or papers issued in the course of any investigation or hearing who shall disobey or neglect to obey any such subpoena shall be guilty of a misdemeanor. Such subpoenas shall also issue at the request of the keeper or owner of the dog which is the subject of the hearing upon the filing by such person of a declaration made under penalty of perjury showing good cause for such issuance. The person serving any subpoena issued pursuant to this section shall pay or offer to pay the witness at the time of service a witness fee plus mileage at the current rates established by statute for attendance of witnesses in civil actions in superior courts.

(Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97.)

Sec. 3-51413. Affirmative defense to classification.

It shall be an affirmative defense to classification under section 3-51402 if at the hearing provided by section 3-51410 the dog owner or keeper demonstrates by a preponderance of the evidence that the behavior in question was directed against a willful trespasser inside a fully enclosed building or fenced area on private property. (Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 15, 4-6-04.)

Sec. 3-51414. Successor owners or keepers.

Any person who shall become the owner or keeper of a dog subsequent to a determination made pursuant to this article that the dog is dangerous or potentially

dangerous shall, if he or she knows of such determination, comply with all the provisions of this article.

(Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97.)

Sec. 3-51415. Judicial review; notice of intent to seek judicial review; request for record.

- (a) Any determination made after a hearing under section 3-51410 shall be final and conclusive as to the city, and may not be appealed excepted as provided in subsection (b). The procedures specified in Food and Agricultural Code section 31622 for judicial review are expressly not adopted.
- (b) Judicial review of a final decision under section 3-51410 may be had by filing a petition for a writ of mandate in the Superior Court in accordance with the provisions of the Code of Civil Procedure.
- (c) A dog determined to be a "dangerous dog" shall be destroyed within the time periods specified in section 3-51436 notwithstanding that the Code of Civil Procedure may allow a longer time to file a petition for writ of mandate.
- (d) Unless expressly provided otherwise, the requirements of this article for keeping a potentially dangerous dog are not stayed pending judicial review.
- (e) After service of a final decision on the parties and upon written request to animal services, a complete record of the proceedings shall be prepared and delivered to the owner or keeper of the dog within ten days, or as soon thereafter as reasonably possible. The owner or keeper of the dog may be charged the actual cost of transcribing or otherwise preparing the record.

(Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 16, 4-6-04; Ord. No. 34-2004, § 3, 11-2-04.)

Sec. 3-51416. Seizure and impoundment.

- (a) A dog classified as dangerous under section 3-51403 shall be impounded as soon practical after service of the classification notice. If a dog initially classified as dangerous is determined after a hearing under section 3-51410 not to be dangerous but potentially dangerous, then the dog shall be either released or held impounded as provided in this section. If the dog is determined after a hearing to be neither dangerous nor potentially dangerous, the dog shall be released.
- (b) An animal services officer may impound a dog classified as potentially dangerous when:
- (1) The officer has probable cause to believe the dog poses an immediate threat to public health or safety; or,
- (2) The owner or keeper of a dog classified as potentially dangerous has received notice of classification and failed to timely comply with any of the requirements or violated any of the prohibitions under this article for keeping a potentially dangerous dog.
- (c) A dog impounded under subsection (b) shall be released when:
- (1) The owner and keeper have complied with sections 3-51419, 3-51420, 3-51423, 3-51426 and any other conditions imposed by the superintendent, demonstrated the ability and intent to immediately comply with sections 3-51427 and 3-51428, and paid the costs of impoundment; or,

- (2) The decision maker after a hearing determines that the dog should not be classified as potentially dangerous.
- (d) Notwithstanding subsection (c)(1), if within 30 days of service of the notice of potentially dangerous dog classification the dog's owner or keeper fails to do any of the following, the dog may be humanely destroyed on not less than five days' notice to the owner or keeper, excluding Saturdays, Sundays and city holidays. The notice may be served as provided in section 3-51406(b), must describe the requirement not complied with, and must notify the owner or keeper of the right to a hearing before the dog's destruction and the process for requesting a hearing.
- (1) Demonstrate an intention and an ability to immediately comply with this article's requirements for keeping a potentially dangerous dog;
- (2) Secure the release of his or her dog from impoundment; or,
- (3) Promptly pay impoundment fees as to secure release of the dog.
- (e) If the dog is found to be potentially dangerous or dangerous, the owner and keeper shall be jointly and severally liable to the city for all impoundment costs. No dog for which impoundment costs are due shall be released until the charges have been paid.
- (f) An owner or keeper may contest the impoundment of a dog under subsection (b)(1) or (2) or the destruction of a dog under subsection (d) by requesting a hearing as provided in section 3-51405. When an owner or keeper timely requests a hearing to contest impoundment under (b)(1) and timely requests a hearing to contest a potentially dangerous dog classification, the superintendent may combine the requests and schedule in a single hearing to resolve both requests.

(Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 17, 4-6-04; Ord. No. 34-2004, § 4, 11-2-04.)

Sec. 3-51417. Alternative impoundment.

When not contrary to public safety, an animal services officer shall, at the request of an owner or keeper, permit a dog which might otherwise be impounded pursuant to this article to be confined at the owner's expense in a mutually agreed upon, animal services-approved, kennel or veterinary facility.

(Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97.)

Sec. 3-51418. Mitigating circumstances.

Before classifying a dog potentially dangerous or dangerous, the following mitigating circumstances, if shown to exist by a preponderance of the evidence, shall be considered. The existence of mitigating circumstances, however, shall not require an animal service officer or the superintendent to refrain from classifying a dog potentially dangerous or dangerous. This section does not require an animal services officer or any other city employee to conduct an independent investigation for the purpose of determining whether any mitigating circumstances exist.

- (a) The person injured or threatened by the dog was at the time:
- (1) Abusing the dog;
- (2) Assaulting another person;
- (3) Committing or attempting to commit either a crime or an intentional property tort on the owner or keeper's property;

- (4) Acting in concert with another who was committing or attempting to commit any of the acts described in this subsection.
- (b) The animal was:
- (1) Threatening or attacking the dog when it was injured or threatened by the dog;
- (2) Injured or threatened while the dog was working as a hunting dog, herding dog, or predator control dog on the property of, or under the control of, its owner or keeper and the animal was a species or type of animal appropriate to the work of the dog. (Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 18, 4-6-04.)

Sec. 3-51419. Licensing of potentially dangerous dogs.

The owner or keeper of a dog classified potentially dangerous under this article must obtain a special potentially dangerous dog license from animal services within five business days of service of a potentially dangerous dog classification notice. A potentially dangerous dog fee in addition to the regular licensing fee, as established by the city council, shall be charged the dog's owner to provide for the increased costs of maintaining compliance with the requirements of this article.

(Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 19, 4-6-04.)

Sec. 3-51420. Display of potentially dangerous dog license tag.

The owner or keeper of a dogs classified as potentially dangerous under this article and licensed as provided in section 3-51419 must display on the dog's collar at all times a distinctive license tag issued by the city.

(Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 20, 4-6-04.)

Sec. 3-51421. Restraint of potentially dangerous dogs.

- (a) The owner or keeper of a dog found to be potentially dangerous under this article must restrain the dog at all times by one of the following methods:
- (1) Securely confine the dog indoors.
- (2) Securely confine the dog to the dog owner's or keeper's property or other property with that property owner's permission by means of a physical device or structure and in a manner that prevents the dog from reaching adjoining private property or any property used by the public. Where the dog is confined by means of a fenced yard or enclosure, the fence or enclosure must meet the requirements of section 3-5512 and must be constructed so as to prevent trespass by children in order to comply with this section.
- (3) Restrain the dog as provided in section 5-5501(c) and under the control of a responsible adult.
- (4) Humanely confine the dog in a vehicle so that it can neither escape nor inflict injury on passersby.
- (b) The animal services superintendent may impose additional restrain requirements on the owners and keepers of a dog classified potentially dangerous, including requiring that the dog be muzzled whenever the dog is not secured indoors. Failure to comply with any order of the superintendent under this subsection is a violation of this article.

(Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 21, 4-6-04.)

Sec. 3-51422. Notice of escape or disposition of potentially dangerous dogs.

The owner or keeper of any dog classified potentially dangerous under this article must notify animal services immediately if the dog is on the loose or unconfined. The owner of a dog classified potentially dangerous under this article must notify animal services within 48 hours if the dog dies, is sold, transferred, kept at a new location, or the owner or keeper changes addresses. The owner or keeper must provide the new address where the dog is to be kept and of the name, address and telephone number of any new owner. Any new owner applying for a license for a dog classified as potentially dangerous under this article or classified under the laws of any other jurisdiction regulating potentially dangerous or vicious dogs, must inform animal services of that fact, if known. (Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 22, 4-6-04.)

Sec. 3-51423. Posting of premises where potentially dangerous dog is maintained.

The owner or keeper of a dog found to be potentially dangerous under this article must within five days of the classification or immediately upon relocating the dog to new premises in the City of Fremont, which ever is later, display on any premises where the dog is kept a sign approved by animal services depicting a menacing dog and warning there is a potentially dangerous dog on the premises. The sign must be visible to the general public. Animal services shall make such signs available for purchase. (Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 23, 4-6-04.)

Sec. 3-51424. Owner or keeper of potentially dangerous dog to permit inspection.

The owner or keeper of any dog classified potentially dangerous under this article must consent as a condition of licensing the dog as a potentially dangerous dog to inspection by city enforcement officers under section 1-3109 of the property where the dog is kept and of the dog at any reasonable time and in a reasonable manner to verify full compliance with the requirements imposed under this article.

(Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 24, 4-6-04.)

Sec. 3-51425. Possession or control of potentially dangerous dogs by certain persons prohibited.

- (a) A minor must not acquire possession or control of a dog classified potentially dangerous at any time. When a minor is keeping a dog that is later classified potentially dangerous, the dog must be removed from the City of Fremont or ownership and control of the dog transferred to a new owner and keeper within 15 days of service of the classification notice.
- (b) Any person charged with a crime involving the use of violence or a crime involving the sale of controlled substances who has plead guilty or no contest to the charge or a lesser offense must not acquire possession or control of a dog classified potentially dangerous under this article. When an individual has already plead guilty or no contest to

a charge described in this paragraph at the time the dog is classified potentially dangerous, within 15 days of service of the classification notice the individual must remove the dog from the City of Fremont or transfer ownership and control of the dog to a new owner and keeper. When an individual who already possesses a potentially dangerous dog pleads guilty or no contest to a charge described in this paragraph, within 15 days of the plea the individual must remove the dog from the City of Fremont or transfer ownership and control of the dog to a new owner and keeper. A transfer of ownership and control does not comply with this paragraph unless the new owner and keeper resides at a different parcel of property as the person subject to this section. (Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 26, 4-6-04.)

Sec. 3-51426. Insurance requirements for owning or keeping a potentially dangerous dog.

The animal services superintendent may require the owner or keeper of any dog classified as potentially dangerous under this article to maintain liability insurance of least \$250,000.00 covering any damage or injury caused by the potentially dangerous dog. In determining whether to impose an insurance requirement under this section, the animal services superintendent must consider the relative size, strength, and aggressiveness of the dog, and any testimony that may be received at a hearing to contest classification concerning the dog's upbringing and the owner or keeper's control of the dog. The insurance must be maintained for as long as the dog is kept in the City of Fremont. The owner or keeper must provide proof of coverage in the form of a certificate issued by the insurer that commits to giving the city at least 30 days' advance notice of cancellation. The insurance must be obtained and a certificate presented to animal services within 30 days of the dog being classified as potentially dangerous.

(Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 27, 4-6-04.)

Sec. 3-51427. Identification of potentially dangerous dogs.

- (a) The owner or keeper of a dog classified potentially dangerous under this article must within 30 days of service of the classification notice and at his or her own expense have either:
- (1) An identification number assigned to the dog by a nationally recognized tattoo registry service tattooed permanently on the inner left rear leg of the dog; or,
- (2) An identification microchip embedded under the dog's skin by animal services. If an owner or keeper elects this option, he or she must exercise reasonable diligence in arranging to have the procedure performed before the expiration of the 30-day period.
- (b) Compliance with this section shall be stayed upon request for hearing under section 3-51405 or the filing of a petition for writ of mandate under section 3-51415 to contest the potentially dangerous dog classification.

(Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 28, 4-6-04; Ord. No. 34-2004, § 5, 11-2-04.)

Sec. 3-51428. Sterilization of potentially dangerous dogs.

- (a) The owner or keeper of a dog classified potentially dangerous under this Article must within 30 days of service of the classification notice and at his or her own expense have the dog sterilized by a veterinarian licensed by the State of California and provide satisfactory written proof of completion of the procedure to Animal Services.
- (b) Compliance with this section shall be stayed upon request for hearing under 3-51405 or the filing of a petition for writ of mandate under Section 3-51415 to contest the potentially dangerous dog classification.

(Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 29, 4-6-04; Ord. No. 34-2004, § 6, 11-2-04.)

Sec. 3-51429. Reserved.

Editor's note: Ord. No. 6-2004, § 25, adopted April 6, 2004, repealed § 3-51429 in its entirety. Formerly, said section pertained to tattoos and sterilization requirements for dangerous and potentially dangerous dogs as enacted by Ord. No. 1872, § 1, adopted May 23, 1989; as amended.

Sec. 3-51430. Reserved.

Editor's note: Ord. No. 6-2004, § 25, adopted April 6, 2004, repealed § 3-51430 in its entirety. Formerly, said section pertained to posting of premises where dangerous dogs are maintained as enacted by Ord. No. 1872, § 1, adopted May 23, 1989; as amended.

Sec. 3-51431. Reserved.

Editor's note: Ord. No. 6-2004, § 25, adopted April 6, 2004, repealed § 3-51431 in its entirety. Formerly, said section pertained to enclosure required for maintenance of dangerous dog as enacted by Ord. No. 1872, § 1, adopted May 23, 1989; as amended.

Sec. 3-51432. Reserved.

Editor's note: Ord. No. 6-2004, § 25, adopted April 6, 2004, repealed § 3-51432 in its entirety. Formerly, said section pertained to notice of escape or disposition of dangerous dogs as enacted by Ord. No. 1872, § 1, adopted May 23, 1989; as amended.

Sec. 3-51433. Reserved.

Editor's note: Ord. No. 6-2004, § 25, adopted April 6, 2004, repealed § 3-51433 in its entirety. Formerly, said section pertained to owners of dangerous dogs to permit compliance verification inspection as enacted by Ord. No. 1872, § 1, adopted May 23, 1989; as amended.

Sec. 3-51434. Reserved.

Editor's note: Ord. No. 6-2004, § 25, adopted April 6, 2004, repealed § 3-51434 in its entirety. Formerly, said section pertained to restraint requirements for dangerous dogs as enacted by Ord. No. 1872, § 1, adopted May 23, 1989; as amended.

Sec. 3-51435. Reserved.

Editor's note: Ord. No. 6-2004, § 25, adopted April 6, 2004, repealed § 3-51435 in its entirety. Formerly, said section pertained to muzzling of dangerous dogs as enacted by Ord. No. 1872, § 1, adopted May 23, 1989; as amended.

Sec. 3-51436. Destruction of dangerous dogs; request for temporary stay pending judicial review.

- (a) A dog classified as dangerous shall be destroyed after the later of the following dates:
- (1) The expiration of the time to request a hearing under section 3-51405, provided that a hearing is not timely requested;
- (2) Five days after personal service or ten days after service by mail of the administrative hearing decision, unless a written notice of intent to seek judicial review is delivered to the Fremont Animal Shelter or a petition for writ of mandate has been filed and a copy delivered to the Fremont Animal Shelter.
- (3) 20 days after delivery of the notice of intent to seek judicial review of a final decision under section 3-51410, unless:
- (A) An administrative stay under subdivision (b) is granted, then after the expiration of the administrative stay;
- (B) A court has stayed destruction of the dog pending judicial review, then after the expiration of the court stay; or,
- (C) A petition for writ of mandate has been filed with the Superior Court and a filed endorsed copy has been served on the City of Fremont.
- (4) If a petition for writ of mandate is filed with the Superior Court and the Superior Court upholds administrative hearing decision, then two days after personal service or seven days after mail service of notice of entry of judgment.
- (b) A dog owner or keeper may request a temporary stay of the destruction of his or her dog pending the filing of a petition for writ of mandate by filing a written request for stay with the animal shelter and making an advanced payment for kenneling costs. The stay shall be granted and effective for a number of days equal to the number of days of advanced kenneling costs received. If the dog owner prevails in court, the payments shall be refunded. If a writ of mandate is filed before expiration of the stay under this subdivision, the balance of the advanced payment shall be refunded pending the final outcome of the matter.
- (c) The owner and keeper shall be jointly and severably liable to the City of Fremont for the cost of impoundment, kenneling, euthanasia, and disposal of the dog's remains. (Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 30, 4-6-04; Ord. No. 34-2004, § 7, 11-2-04.)

Sec. 3-51436.1. Reserved.

Editor's note: Ord. No. 6-2004, § 25, adopted April 6, 2004, repealed § 3-51436.1 in its entirety. Formerly, said section pertained to destruction of dangerous dogs in the first instance as enacted by Ord. No. 2165, § 3, adopted April 16, 1996; as amended.

Sec. 3-51437. Violation of article.

Any violation of this article is a misdemeanor that may be charged as provide in section 1-3100(b).

(Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 31, 4-6-04.)

Sec. 3-51438. Restrictions on possession or control of dogs by certain persons.

- (a) The superintendent may upon a finding of good cause prohibit for a period of three years the possession or control of any dog by any person who violates the provisions of this article pertaining to the ownership or keeping of a dog classified potentially dangerous. The restriction will not be effective until the superintendent provides written notice of the prohibition in the manner described in section 3-51406(b), the opportunity to request a hearing under 3-51410 and an opportunity to seek judicial review of the hearing outcome as provided in section 3-51415.
- (b) The superintendent may upon a finding of good cause prohibit the possession or control of any dog by the owner and keeper of a dog classified as dangerous under this article. The restriction will not be effective until the superintendent provides written notice of the prohibition in the manner described in section 3-51406, the opportunity to request a hearing under 3-51410 and an opportunity to seek judicial review of the hearing outcome as provided in section 3-51415. The person subject to this prohibition may request a hearing under 3-51410 after two years to request the removal of the prohibition. If the person demonstrates by a preponderance of the evidence that he or she, if given the opportunity, is likely to comply with the provisions of this chapter pertaining to the keeping of dogs, the Superintendent may remove the prohibition completely or partially remove the prohibition so as to allow the person to possess and control a dog but not possess or control a dog classified as potentially dangerous.

(Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 32, 4-6-04; Ord. No. 34-2004, § 8, 11-2-04.)

Sec. 3-51439. Owners of potentially dangerous dogs to acknowledge receipt of potentially dangerous dog regulations.

The owner and keeper of any dog found potentially dangerous under this article must, as a condition of licensing and keeping the dog, obtain at the earliest opportunity after receiving notice of the classification but in no event more than seven days after service of the classification notice, and acknowledge in writing receipt of a copy of this article. (Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 33, 4-6-04.)

Sec. 3-51440. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

(Ord. No. 1872, § 1, 5-23-89; Ord. No. 2214, § 1, 1-14-97; Ord. No. 6-2004, § 34, 4-6-04.)